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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Assessment of Annual Regulatory Fees
MD Docket No. 96-186
Comments of the Arkansas Broadcasters Association

Dear Mr. Caton:

Transmitted herewith, on behalf of the Arkansas Broadcasters Association, are an original and nine (9) copies of its Comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

Frank R. Jazzo

Frank R. Jazzo
Counsel for Arkansas Broadcasters Association

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 1 of the	)	
Commission's Rules, Pertaining	)	MD Docket No. 96-186
to the Schedule of Annual Regulatory	)	
Fees for Mass Media Services	)	

To: The Commission

COMMENTS OF THE ARKANSAS BROADCASTERS ASSOCIATION

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December 19, 1996

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To: The Commission

COMMENTS OF THE ARKANSAS BROADCASTERS ASSOCIATION

I. INTRODUCTION

The Arkansas Broadcasters Association (the "Association"), by its attorneys and pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), hereby submits these Comments in response to the *Notice of Inquiry* (*"NOI"*), FCC 96-422, released by the Commission on November 6, 1996. In these Comments, the Association opposes the unfair burden placed upon radio broadcast stations in smaller markets under the current regulatory fee regime. Accordingly, the Association urges the Commission to adopt the methodology proposed by the Montana Broadcasters Association for assessing annual regulatory fees upon licensees of AM and FM broadcast stations based on market size. The Association concludes that the current Schedule, based as it is solely upon class of station, fails to reflect the economic realities facing radio broadcast stations and thereby imposes an inequitable burden upon radio broadcast stations in small markets.

As discussed below, the methodology proposed by the Montana Broadcasters Association more accurately and equitably reflects the economic realities of the broadcasting business, particularly with respect to stations in smaller markets. Accordingly, the annual regulatory fees assessed thereby better serve the public interest by both recognizing the fiscal significance of and accounting for the population density of an AM or FM station's geographic location. The proposal promulgated by the Montana Broadcasters Association posits a schedule of fees that will much more fairly allocate the regulatory fee burden among the nation's radio stations with no adverse effect on the Commission's mandated regulatory fee collections.

II. CONSISTENT WITH THE PROPOSAL OF THE MONTANA BROADCASTERS ASSOCIATION, THE COMMISSION SHOULD AMEND THE CURRENT SCHEDULE OF ANNUAL REGULATORY FEE ASSESSMENTS UPON AM AND FM BROADCAST STATIONS TO REFLECT BOTH CLASS OF STATION AND MARKET SIZE.

In 1995, the Commission correctly noted that "the population density of a station's geographic location was . . . a public interest factor warranting recognition in the fee schedule." *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, FCC 95-14, at ¶ 29 (released January 12, 1995). Again last year, the Commission reiterated its interest in adopting a methodology for the assessment of regulatory fees upon AM and FM broadcast stations which would "associate population density and service area contours with license data" in reaching fee determinations. *Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, FCC 96-153, at ¶¶ 20-21 (released April 9, 1996).

Nevertheless, both the 1994 and 1995 regulatory fee schedules for commercial radio stations drew distinctions only between AM and FM stations and, within each service, between the technical classes of stations without any accounting for the population density of a station's service area. Four regulatory fee categories were drawn for AM stations--one for each class, A, B, C, and D. For FM stations, two categories were created: greater coverage area stations, *i.e.,* Classes C, C1, C2, and B, and lesser coverage area stations, *i.e.,* Classes A, B1, and C3.

Under this regime, a Class B AM station in New York City--the top radio market according to Arbitron with a metro survey area population of 14,114,700--pays exactly the same regulatory fee as a Class B AM station in Searcy, Arkansas--a radio market not even rated in the top two hundred by Arbitron with a survey area population of 18,500. Likewise, a Class C FM station in Los Angeles--the second-ranked radio market according to Arbitron with a metro survey area population of 9,687,300--is required to remit an identical regulatory fee as a Class C2 FM station in Little Rock, Arkansas--the eighty-second-ranked radio market with a metro survey area population of 446,800. Such a result is utterly inequitable given the vast economic differences in the markets. For example, in 1994, the buying income for New York City was $172,660,570,000, or 607 times the buying income of Searcy, $284,219,000. Retail sales in New York City were 167 times greater than they were in Searcy. In Los Angeles, in 1994, the aggregate buying income was $155,109,723,000, as compared to $8,885,001,000 for Little Rock, a 1745% difference. Similarly, retail sales in Los Angeles in 1994 totalled $65,878,295,000, more than twelve times the $5,214,928,000 generated in Little Rock in the same year.[1] These drastic financial differences inevitably mean drastic differences in station revenues and value, yet the regulatory fees in the two markets currently are the same. The Commission's failure to incorporate market size into its regulatory fee schedule for AM and FM broadcast stations contravenes the public interest it is charged with serving.

A leading broadcast financial data research firm, BIA Publications, Inc., has assembled data which further emphasize the economic significance of market size in the radio broadcasting business. Their research confirms that radio stations in the top fifty markets receive 57.3% of the nation's total radio revenue with stations in the top twenty markets alone collecting 40.7% of the total revenue.

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1 RAND MCNALLY 1996 COMMERCIAL ATLAS & MARKETING GUIDE 56-57 (127th ed. 1996).

Radio broadcast stations in the next fifty markets earn another 11.1% of radio revenue. Accordingly, the top 100 radio markets take in 68.4% of all radio revenue.[2] By contrast, in April 1996, those hundred markets contained only 1,322 of the 8,795 radio stations anticipated to pay regulatory fees for fiscal year 1996; thus, a mere 15% of all licensed radio broadcast stations collect fully 68.4% of total radio revenue. The inequity of the current regulatory fee schedule based solely on technical facilities groupings imposes a substantial burden on radio stations in smaller markets, which could affect the ability of those stations to serve their communities.

III. THE FEE STRUCTURE AS ORIGINALLY PROPOSED BY THE MONTANA BROADCASTERS ASSOCIATION SHOULD BE ADOPTED USING THE RATIOS CONTAINED THEREIN.

The Association strongly endorses a regulatory fee structure that will differentiate between markets and levy fees in a manner that will account for the population density of a radio station's geographic service area. The methodology proposed by the Montana Broadcasters Association fairly reflects the significant economic variations among radio broadcast stations in markets of different sizes. A regulatory fee schedule following the method proposed by the Montana Broadcasters Association represents considerable progress toward alleviating the harsh inequity of the current regime.

According to the fee schedule proposed by the Montana Broadcasters Association, as reflected in the chart following paragraph 5 of the *Notice of Inquiry, supra*, the manner in which regulatory fees would be assessed is both horizontally and vertically equitable. The figures on the vertical axis of the chart appear to fairly reflect the economic differences among radio stations in markets of different sizes and of different classes. The figures expressed along the horizontal axis likewise appear to equitably

[2] BIA PUBLICATIONS, INC., STATE OF THE RADIO INDUSTRY 1996 34 (1996).

reflect the economic variations among stations of differing operating classes. The Montana Broadcasters Association themselves concede that their figures do not perfectly "reflect the precise market circumstances faced by each licensee;" nevertheless, there can be little doubt that its proposal distributes the regulatory fee burden much more fairly among the nation's radio stations than does the present regime.

By contrast, the alteration of the original proposal undertaken by the Commission reintroduces inequity--this time among the operating classes of stations--and should be abandoned or at least reconsidered. Following Congress' mandate to redistribute the regulatory fees assessed against television broadcast stations, the Commission substituted the new ratios between the regulatory fees for television stations in different sized markets for the old ratios employed in the original proposal of the Montana Broadcasters Association. As a direct consequence of the Commission's new calculus, there was a staggering increase in fees in all but the smallest markets. In addition, considerable inequity developed between the regulatory fees levied against higher powered AM stations in the largest markets as compared to the fees levied against higher powered FM stations. After the Commission's recalculation, Class A AM Stations in the largest markets went from paying an identical regulatory fee as Class I FM Stations in the same markets to an assessment almost 2.4 times that required from comparable FM stations.[3] This new computation by the Commission fails to accurately reflect the economic realities of the radio broadcast industry. For example, generally speaking, there is little dispute that FM stations are considerably more valuable properties than comparable AM

[3] The Arkansas Broadcasters Association recognizes that an increase in the average regulatory fee assessment will inevitably follow a congressional mandate that increases the aggregate amount of fees to be recovered by the Commission in any given year; however, it does not necessarily follow that inequity must be introduced into the fee schedule to accomplish increased revenue for the Commission's fisc.

stations in the same market. Consequently, the regulatory fee structure illustrated by the chart following paragraph 6 of the *Notice of Inquiry, supra*, introduces economic inequity to an otherwise fair methodology for the distribution of the regulatory fee burden among the nation's radio stations.

In sum, the Association, most of whose members operate radio broadcast facilities in markets smaller than the top 100, strenuously urges the Commission to adopt the proposal of the Montana Broadcasters Association using the ratios originally proposed and reflected in the fee schedule following paragraph 5 of the *Notice of Inquiry, supra*. Such a revision by the Commission of its regulatory fee schedule to incorporate relative market size as well as the operating class of the radio station would result in considerable progress toward assessments that more closely reflect the realities of the marketplace in which broadcasters operate.

Respectfully submitted,

ARKANSAS BROADCASTERS ASSOCIATION

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